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Report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session

Report of the Sixth Committee

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I. Introduction

1. At its 2nd plenary meeting, on 17 September 2004, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its fifty-ninth session the item entitled "Report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session" and to allocate it to the Sixth Committee.

2. The Sixth Committee considered the item at its 1st, 2nd, 14th and 16th meetings, on 4, 5, 26 and 29 October 2004. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records (A/C.6/59/SR.1, 2, 14 and 16).

3. For its consideration of the item, the Committee had before it the report of the United Nations Commission on International Trade Law on its thirty-seventh session.[1]

4. At the 1st meeting, on 4 October, the Chairman of the United Nations Commission on International Trade Law at its thirty-seventh session introduced the report of the Commission on the work of that session.

[1] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 17* (A/59/17).

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II. Consideration of proposals

A. Draft resolution A/C.6/59/L.11

5. At the 14th meeting, on 26 October, the representative of Austria, on behalf of Algeria, Argentina, Australia, Austria, Bahamas, Belarus, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Croatia, Cyprus, the Czech Republic, the Democratic Republic of the Congo, Denmark, the Dominican Republic, Ecuador, El Salvador, Fiji, Finland, France, Gabon, Germany, Greece, Guatemala, Guinea, Hungary, India, Iran (Islamic Republic of), Ireland, Israel, Italy, Jordan, Liechtenstein, Lithuania, Luxembourg, Madagascar, Mexico, Mongolia, Morocco, the Netherlands, New Zealand, Norway, Paraguay, the Philippines, Portugal, the Republic of Korea, Romania, the Russian Federation, Serbia and Montenegro, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Turkey, Uganda, the United Kingdom of Great Britain and Northern Ireland and Uruguay, subsequently joined by Kenya, Malaysia, Tunisia and Ukraine, introduced a draft resolution entitled "Report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session" (A/C.6/59/L.11).

6. At the 16th meeting, on 29 October, the Committee adopted draft resolution A/C.6/59/L.11 without a vote (see para. 10, draft resolution I).

7. After the adoption of the draft resolution, the representatives of the United States of America and Japan made statements in explanation of position (see A/C.6/59/SR.16).

B. Draft resolution A/C.6/59/L.12

8. At the 14th meeting, on 26 October, the Chairman of the Committee introduced a draft resolution entitled "Legislative Guide on Insolvency Law of the United Nations Commission on International Trade Law" (A/C.6/59/L.12).

9. At the 16th meeting, on 29 October, the Committee adopted draft resolution A/C.6/59/L.12 without a vote (see para. 10, draft resolution II).

III. Recommendations of the Sixth Committee

10. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolutions:

Draft resolution I
Report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Reaffirming its belief that the progressive modernization and harmonization of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting the developing countries, would contribute significantly to universal economic cooperation among all States on a basis of equality, equity and common interest and to the elimination of discrimination in international trade and, thereby, to the well-being of all peoples,

Having considered the report of the Commission on its thirty-seventh session,[1]

Reiterating its concern that activities undertaken by other bodies in the field of international trade law without adequate coordination with the Commission might lead to undesirable duplication of efforts and would not be in keeping with the aim of promoting efficiency, consistency and coherence in the unification and harmonization of international trade law,

Reaffirming the mandate of the Commission, as the core legal body within the United Nations system in the field of international trade law, to coordinate legal activities in this field, in particular to avoid duplication of efforts, including among organizations formulating rules of international trade, and to promote efficiency, consistency and coherence in the modernization and harmonization of international trade law, and to continue, through its secretariat, to maintain close cooperation with other international organs and organizations, including regional organizations, active in the field of international trade law,

1. *Takes note with appreciation* of the report of the United Nations Commission on International Trade Law on its thirty-seventh session;[1]

2. *Commends* the Commission for the completion and adoption of its Legislative Guide on Insolvency Law;[2]

3. *Also commends* the Commission for the progress made in the work on a draft convention on electronic contracting, on a draft instrument on transport law, on a draft legislative guide on secured transactions and on model legislative provisions

[1] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 17* (A/59/17).
[2] Ibid., chap. III.

on interim measures in international commercial arbitration, and for the Commission's decision to undertake a revision of its Model Law on Procurement of Goods, Construction and Services[3] to reflect new practices, including those resulting from the increasing use of electronic communications in public procurement;[4]

4. *Endorses* the efforts and initiatives of the Commission, as the core legal body within the United Nations system in the field of international trade law, aimed at increasing coordination of and cooperation on legal activities of international and regional organizations active in the field of international trade law, and in this regard appeals to relevant international and regional organizations to coordinate their legal activities with those of the Commission, to avoid duplication of efforts and to promote efficiency, consistency and coherence in the modernization and harmonization of international trade law;

5. *Reaffirms* the importance, in particular for developing countries, of the work of the Commission concerned with training and legislative technical assistance in the field of international trade law, and in this connection:

(a) Welcomes the Commission's initiatives towards expanding, through its secretariat, its training and legislative technical assistance programme;

(b) Expresses its appreciation to the Commission for organizing seminars and briefing missions in Azerbaijan, Colombia, Serbia and Montenegro, the Sudan, Thailand, Venezuela and Yemen;

(c) Expresses its appreciation to the Governments whose contributions enabled the seminars and briefing missions to take place, and appeals to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the United Nations Commission on International Trade Law Trust Fund for Symposia and, where appropriate, to the financing of special projects, and otherwise to assist the secretariat of the Commission in carrying out training and legislative technical assistance activities, in particular in developing countries;

(d) Reiterates its appeal to the United Nations Development Programme and other bodies responsible for development assistance, such as the World Bank and regional development banks, as well as to Governments in their bilateral aid programmes, to support the training and legislative technical assistance programme of the Commission and to cooperate and coordinate their activities with those of the Commission;

6. *Takes note with regret* that, since the previous session of the Commission, no contributions have been made to the trust fund established to provide travel assistance to developing countries that are members of the Commission, at their request and in consultation with the Secretary-General, stresses the need for contributions to the trust fund in order to increase expert representation from developing countries at sessions of the Commission and its working groups, and reiterates its appeal to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the trust fund;

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[3] Ibid., *Forty-ninth Session, Supplement No. 17* and corrigendum (A/49/17 and Corr.1), annex I.

[4] Ibid., *Fifty-ninth Session, Supplement No. 17* (A/59/17), chap. VIII, paras. 81 and 82.

7. *Decides*, in order to ensure full participation by all Member States in the sessions of the Commission and its working groups, to continue, in the competent Main Committee during the fifty-ninth session of the General Assembly, its consideration of granting travel assistance to the least developed countries that are members of the Commission, at their request and in consultation with the Secretary-General;

8. *Recalls* its resolutions on partnerships between the United Nations and non-State actors, in particular the private sector,[5] and in this regard welcomes the Commission's consideration of the means of actively engaging non-State actors in its work,[6] and encourages the Commission to further explore different approaches to the use of partnerships with non-State actors in the implementation of its mandate, in particular in the area of training and technical assistance, in accordance with the applicable principles and guidelines and in cooperation and coordination with other relevant offices of the Secretariat;

9. *Approves*, in conformity with its resolutions on documentation-related matters, which, in particular, emphasize that any reduction in the length of documents should not adversely affect either the quality of the presentation or the substance of the documents,[7] the conclusions reached by the Commission in paragraphs 124 to 128 of its report[1] regarding the imposition of page limits on its documentation, and requests the Secretary-General to bear in mind the particular characteristics of the mandate and work of the Commission in implementing page limits with respect to the documentation of the Commission;

10. *Also approves* the conclusions of the Commission in paragraph 130 of its report regarding the need for the continuing provision of summary records of its meetings relating to the formulation of normative texts;

11. *Stresses* the importance of bringing into effect the conventions emanating from the work of the Commission for the global unification and harmonization of international trade law, and, to this end, urges States that have not yet done so to consider signing, ratifying or acceding to those conventions;

12. *Notes* that 2005 will mark the twenty-fifth anniversary of the adoption of the United Nations Convention on Contracts for the International Sale of Goods[8] and the twentieth anniversary of the adoption of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law,[9] and in this regard welcomes initiatives being undertaken to organize conferences and similar events to provide a forum for assessing the experience, in particular of courts and arbitral tribunals, with those texts;

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[5] Resolutions 55/215, 56/76 and 58/129.

[6] See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 17* (A/59/17), chap. XV, sect. A.

[7] Resolutions 57/283 B, section III, para. 29, and 58/250, section III, paras. 2 and 17.

[8] United Nations, *Treaty Series*, vol. 1489, No. 25567.

[9] *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I.

13. *Expresses its appreciation* for the preparation of a digest of case law on the United Nations Convention on Contracts for the International Sale of Goods, intended to assist in the dissemination of information on the Convention and promote its adoption, use and uniform interpretation, and for the progress of work on a digest of case law relating to the Model Law on International Commercial Arbitration.

Draft resolution II
Legislative Guide on Insolvency Law of the United Nations Commission on International Trade Law

The General Assembly,

Recognizing the importance to all countries of strong, effective and efficient insolvency regimes as a means of encouraging economic development and investment,

Noting the growing realization that reorganization regimes are critical to corporate and economic recovery, the development of entrepreneurial activity, the preservation of employment and the availability of finance in the capital market,

Noting further the importance of social policy issues to the design of an insolvency regime,

Noting with satisfaction the completion and adoption of the Legislative Guide on Insolvency Law of the United Nations Commission on International Trade Law by the Commission at its thirty-seventh session, on 25 June 2004,[1]

Believing that the Legislative Guide, which includes the text of the Model Law on Cross-Border Insolvency and Guide to Enactment recommended by the General Assembly in its resolution 52/158 of 15 December 1997, contributes significantly to the establishment of a harmonized legal framework for insolvency and will be useful both to States that do not have an effective and efficient insolvency regime and to States that are undertaking a process of review and modernization of their insolvency regimes,

Recognizing the need for cooperation and coordination between international organizations active in the field of insolvency law reform to ensure consistency and alignment of that work and to facilitate the development of international standards,

Noting that the preparation of the Legislative Guide was the subject of due deliberations and extensive consultations with Governments and international intergovernmental and non-governmental organizations active in the field of insolvency law reform,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for the completion and adoption of its Legislative Guide on Insolvency Law;[1]

2. *Requests* the Secretary-General to publish the Legislative Guide and to make all efforts to ensure that it becomes generally known and available;

3. *Recommends* that all States give due consideration to the Legislative Guide when assessing the economic efficiency of their insolvency regimes and when revising or adopting legislation relevant to insolvency;

4. *Recommends also* that all States continue to consider implementation of the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law.

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[1] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 17* (A/59/17), chap. III.